IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1695

JAMES A. CARINI, ET AL., *Petitioners*

v.

UNITED STATES OF AMERICA, ET AL., *Respondents*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JAMES E. BRADBERRY
D. WAYNE MOORE
MOORE, WEAVER, MOORE
& BRADBERRY
13185 Warwick Boulevard
Newport News, Virginia 23602

GEORGE H. MAHLER
MAHLER & CAVE
2224 North Great Neck Road
Virginia Beach, Virginia
23451

*Attorneys for Petitioners*

A. E. HOWARD
University of Virginia
School of Law
*Of Counsel*

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### DECISIONS BELOW

The United States District Court for the Eastern District of Virginia on January 7, 1975, found for the plaintiffs. (App. p. 9a)

On appeal the United States Court of Appeals for the Fourth Circuit reversed the decision of the lower Court and found for the United States. (App., p. 2a)

### GROUNDS FOR JURISDICTION

The plaintiffs petition the Supreme Court of the United States for a Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit, which decision was handed

down the 19th day of December, 1975, and upon a Petition for Rehearing which petition was denied by Order of the Court entered the 20th day of February, 1976.

Jurisdiction of the Federal Courts is based on the Tucker Act, 28 U.S.C. § 1346(a)(2) and Venue is based upon 28 U.S.C. § 1391(e).

Jurisdiction of the Supreme Court of the United States to review the Order of the Court of Appeals for the Fourth Circuit is based on 28 U.S.C. § 1254(1) and on the U.S. Const., Art. III, § 2, cl. 2.

## QUESTIONS PRESENTED

1. Whether the unilateral retroactive modification of an Enlistment Contract by Congressional Action can deprive petitioners of a vested property right in violation of the Fifth Amendment to the United States Constitution?

2. Whether the government is estopped from denying the petitioners the variable re-enlistment bonus which the government promised them?

3. Whether public law 93-277 amending 37 U.S.C. 308 (g)(1968) requires the United States Navy to break its contracts with the petitioners for the payment to them of their variable re-enlistment bonuses?

## CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

The constitutional provisions, treaties, statutes, ordinances and regulations which this case involves are as follows:

U.S. Const., Fifth Amendment
The Tucker Act, 28 U.S.C. § 1346(a)(2)
Uniformed Services Pay Act of 1968, Pub. L. No. 89-131 § 3, 37 U.S.C. § 308 (1968)



Armed Forces Enlisted Personnel Bonus Revision Act of 1974, P.L. 93-277 § 2 (1), 37 U.S.C. § 308 (1974)
Do Navy BUPERINST 1133.18E § 7h (Mar. 23, 1972)
DOD Directive 1304.14 § IV.F (Sept. 3, 1970)
DOD Instruction 1304.15 § V.B.1 (Sept. 3, 1970)
DOD Instruction 1304.15 § VI.A (Sept. 3, 1970)

## STATEMENT OF THE CASE

Petitioners herein contend that the United States owes to each of them certain monies, to which they became entitled upon entering into an enlistment contract as members of the United States Navy. The monies claimed represent the contractual payment to which each petitioner became entitled when each petitioner in return for the money promised by Navy recruiters, agreed with the United States to extend his intended four-year service obligation for two additional years. The precise amount owed each petitioner is computed according to a re-enlistment formula which is a part of the enlistment extension contract. The United States Navy, claiming that the petitioners are not entitled to the benefit of the formula nor to the monies the formula represents, refuses to pay petitioners in accordance with the contract. The United States Navy does, however, require each petitioner to serve the two year extension of service time.

In 1965, the Department of Defense sought and received Congressional authority to establish a system of incentive bonuses to promote retention of persons in highly technical military occupational specialties by inducing the specialists to re-enlist. As enacted by Congress and employed extensively by the Navy, the Act provided for a flexible system of incentive bonuses to

be based on the enlisted member's monthly base pay, multiplied by the number of years of the re-enlistment, times a "Variable Multiple" factor.

All of the petitions arrive in Court having traveled the same route. An original "Enlistment Contract" (DD Form 4, 1 Apr. 68) was executed by each petitioner which obligated him to serve four (4) years in the United States Navy. Each of the petitioners then underwent testing and evaluation to determine their career potentials. Thereafter, either during or at the conclusion of basic training each petitioner was asked to extend his enlistment to study special technical subjects in which there then existed a shortage of trained personnel. Petitioners were required to extend their four year enlistment for two additional years, in order to study the subjects, but were promised a substantial bonus at the end of the original four years. The standard form agreement petitioners executed was entitled "Agreement to Extend Enlistment". As part of the "Agreement to Extend Enlistment" Contract, at the places whereon it is printed "Reason for Extension", in most cases the "reason" typed thereon was: "Training (Nuclear Field Program or Advanced Electronics (AEF) Field Program. AUTH: BUPERSMAN 1050300). I understand that this extension becomes binding upon execution and thereafter may not be cancelled except as set forth in BUPERSMAN 1050150".

None of the enlistment and re-enlistment documents relevant herein contains an express reference to a variable re-enlistment bonus. However, the "Agreement to Extend Enlistment" contract states that each petitioner was extending his enlistment ". . . in consideration of the pay, allowances and benefits which will



accrue to (him) during the continuance of (his) service." In fact, the Navy sold their recruits the specialized training, which required additional service, for the price of the bonus.

There was in effect at the time each petitioner executed the extension agreement a federal statute, 37 U.S.C. § 308(g) (1968), and Department of Defense and Department of Navy implementing regulations, which provided that servicemen who voluntarily extended their enlistment were entitled to a bonus payable in equal yearly installments during the extension period. At the time of the extension agreements the petitioners met the criteria set forth in 37 U.S.C. § 308(g) (1968) and the regulations promulgated pursuant thereto, and implementing the statute. The system of enlisting Navy personnel under an enlistment contract of four years duration and an extension agreement of two years duration, was part of an official Navy enlistment program, designed to retain Navy personnel in certain critical military occupational specialties, and each of the petitioners in this case relied upon payment and receipt of the bonus as an inducement to extend their service.[1] Pursuant to the contracts the enlistees have undertaken special training and have obligated themselves for two years additional service.

On May 10, 1974, the President signed into law, Public Law 93-277 which amended 37 U.S.C. § 308 so as to terminate the variable re-enlistment bonus program effective June 1, 1974. However, Public Law 93-277 contains no provision barring payment (after

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[1] For a full discussion of the program and its history, see *Larionoff* v. *United States*, No. 74-1211 and 74-1212 (Feb. 17, 1976, D.C. Circuit), Appendix p. 69a at 77a.

June 1, 1974) of variable re-enlistment bonuses, contracted for prior to June 1, 1974. The Department of Defense and Department of Navy have refused to pay any VRB's after June 1, 1974, but have required the petitioners to serve the two year extension of service without the benefit of the VRB payment.

The petitioners filed suit in the Eastern District of Virginia pursuant to the Tucker Act, 28 U.S.C. § 1346 (a)(2) seeking payment of their bonus or release from the two year extension. Judge Kellam, upon hearing the case, held that the petitioners were entitled to their bonuses because the petitioners contracted for the rights and benefits at the time the agreement to extend enlistment was signed. Opinion and Order *Carini* v. *United States*, No. 74-88-NN (E.D. Va. 1975), (App. p. 9a).

After concluding that the Navy was contractually bound to pay variable re-enlistment bonuses, the Court found the principal issue to be whether or not Congress could retroactively alter the contracts between the parties. (App. p. 11a.) The Court, finding that the Congress acted purely for reasons of economy, held that the contracts could not be altered and that the plaintiffs must be paid. (App. p. 14a.)

The Fourth Circuit Court of Appeals, while finding the plight of the petitioners "most appealing" from a moral point of view disagreed, holding that a bonus, once promised, could be retroactively taken away.



## ARGUMENT ONE

**The Decision of the Fourth Circuit Court of Appeals Is in Direct Conflict with the Opinion of the Court of Appeals for the District of Columbia, in Larionoff v. United States Decided February 17, 1976, and Is Potentially in Conflict with the Decisions in Four District Court Cases,[2] Consolidated on Appeal to the Ninth Circuit Court of Appeals, and with Caola v. United States, Now on Appeal to the Second Circuit Court of Appeals.**

Rule 19 (1)(b), Rules of the Supreme Court of the United States, sets forth the criteria upon which a Writ of Certiorari may be granted and states, in part:

> "(1) . . . The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons which will be considered:
>
> (a) * * *
>
> (b) Where a Court of Appeals has rendered a decision in conflict with the decision of another Court of Appeals on the same matter, . . ."

Federal District Courts, sitting in Hawaii, California, Virginia, Connecticut, and the District of Columbia, have all heard cases of an identical nature, founded on the same facts as pertain herein. In each instance, the claimants have been awarded judgment against the

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[2] *Aiken* v. *United States* (S.D. Cal.), Appellate Docket Nos. 75-3238 and 75-3432, Ninth Circuit Court of Appeals. (App. p. 43a)

*Adams* v. *United States* (C.D. Cal.), Appellate Docket No. 75-3559, Ninth Circuit Court of Appeals. (App. p. 32a)

*Collins* v. *Schlesinger* (D. Hawaii), Appellate Docket Nos. 75-2935 and 75-2967, Ninth Circuit Court of Appeals. (App. p. 23a)

*Saylors* v. *United States*, Appellate Docket No. 75-3348, Ninth Circuit Court of Appeals.

United States,[3] and the Court has ruled that the United States may *not* unilaterally rescind the bonus provisions of a re-enlistment contract.

In February, 1976, after the Fourth Circuit Court of Appeals spoke on the issue, the District of Columbia Court of Appeals issued an opinion premised on facts identical to those herein. *Larionoff* v. *United States*, ——F.2d —— (D.C. Cir. 1976). (App. p. 69a) The Court considered the unanimous opinions of the District Court Judges, sitting in four states and the District of Columbia, summarily rejected the Fourth Circuit Court opinion, and upheld petitioners' claims against the United States.[4]

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[3] *Collins* v. *Schlesinger, supra.*
*Aikin* v. *United States, supra.*
*Adams* v. *United States, supra.*
*Caola* v. *United States* (No. H-75-110) (D. Conn. Dec. 4, 1975) (App. p. 54a)
*Carini* v. *United States* (No. 74-NN) (E.D. Va. Feb. 3, 1975) (App. p. 9a)
*Larionoff* v. *United States, supra.*

[4] The Court made the following statement regarding Carini as set out in p. 26 of the slip opinion footnote No. 35:

> "This identical question was recently presented by different groups of naval enlisted personnel to the District Court for the Eastern District of Virginia in *Carini* v. *United States*, Civil No. 74-88-NN (Jan. 7, 1975), to the District Court for the District of Hawaii in *Collins* v. *Schlesinger*, Civil No. 75-0053 (May 20, 1975), to the District Court for the Southern District of California in *Aiken* v. *United States*, Civil No. 75-0062-N (Aug. 26, 1975), and to the District Court for the District of Connecticut in *Caola* v. *United States*, Civil No. H-75-110 (Dec. 4, 1975). Those courts reached the same conclusion as we reach today.
>
> We are aware that the Fourth Circuit has reversed the District Court decision in *Carini* on the ground that the 1965 statute was not "a part of the re-enlistment agreement," slip opinion at 6, and that the "contract . . . anticipated possible statutory change," slip opinion at 8. *Carini* v. *United States*, No. 75-1399 (Dec. 19, 1975). We obviously disagree. The Government argued that the case before us turns primarily on the construction of the applicable military regulations. Brief at 15. And as our textual discussion indicates, we construe those regulations to mean that VRB eligibility attaches when an extension agreement is signed. Thus, under our view of the case, the contract clause did not anticipate possible statutory changes and an explicit clause would have been necessary to achieve that effect given existing regulations. See slip opinion pages 21-22 supra.
>
> The Fourth Circuit opinion in *Carini* also places some emphasis on the Congressional intent evidenced in a section of the Conference Report accompanying the 1974 statute ironically labeled "Clarification of interpretation of bill language." H.R. Rep. 93-985, 93d Cong., 2d Sess. 4 (1974). Even if we were to agree that the language in the report indicates that Congress intended to allow the members of this class to become eligible for the new Selective Re-enlistment Bonus "if, during the initial enlistment period, the old re-enlistment extension agreements are cancelled and new ones executed calling for a longer period of extended service," slip opinion at 6, we would still be unable to find any reason to justify congressional abrogation of existing contract obligations to members of the class." (App. p. 92a)



Similar cases are still pending in California, Washington, Idaho, Hawaii, South Carolina, and Florida. A New case involving a substantial number of petitioners, is scheduled for filing in the Eastern District of Virginia. Unless the issues raised herein are resolved by this Honorable Court, the prospective Virginia litigants would be well advised to cross the Potomac and file in Washington, D. C.

Rule 19 considers the undesirability of compelling litigants to forum shop. The present inconsistency in the Circuit Court decisions creates a highly inequitable result, and encourages potential litigants to file suit in a Circuit favorable to their point of view. In light of the number of suits already pending before the courts concerning eligibility for payment of the variable re-enlistment bonus and the fact that there are numerous

litigants waiting to file suit, continued conflict between the District of Columbia Circuit and the Fourth Circuit Court of Appeals must be viewed as highly undesirable.

Two of the issues raised on appeal, simply stated, are:

(1) Did the petitioners herein fulfill their obligation to the U. S. Navy so as to be entitled to a re-enlistment bonus?

(2) Does the United States have the right to unilaterally rescind the bonus provisions of a re-enlistment contract?

In the *Larionoff* case, petitioners sued for recovery of variable re-enlistment bonuses after the United States Navy had determined that the occupational specialties in which they were engaged no longer constituted critical skills for which such bonus would be paid. After a thorough analysis of the cases, including the opinion rendered by the Fourth Circuit Court of Appeals, Judge McGowan concluded that each plaintiff had a contract right (under the same contract for re-enlistment as was signed by petitioners herein) to payment of the bonus authorized by the Uniform Services Pay Act of 1965 and regulations existing at the time the re-enlistment contract was signed. The Court also decided that the Navy could not administratively end that entitlement.

As Judge McGowan notes in *Larionoff* (App. p. 95a), the government is required to treat all members of a class, similarly situated, in a like manner. If, in fact, all members of the class are to be treated in a like manner, are those members of the Navy who are petitioners herein thus entitled to benefit from the decision in the *Larionoff* case by virtue of the doctrine of *res*



*adjudicata*? If so, then it would seem appropriate for them to dismiss this appeal and file an action in the District Court for the District of Columbia, which would be obligated to adhere to the decision of the District of Columbia Court of Appeals. If the doctrine of *res adjudicata* is not applicable, then the government must be entitled to treat members of the same class in an inconsistent manner by virtue of multi-district litigation involving the same issue.

It is obvious that the confusion will be compounded by additional litigation in the absence of definitive action by this Honorable Court.

## ARGUMENT TWO

### Because of the Number of Cases Pending, the Importance of the Issues Presented, and the Conflict with Other Federal Decisions, the Carini Case Presents a Compelling Need for Guidance by the Supreme Court.

Under Rule 19 (b) of the Rules of the Supreme Court, review on certiorari is proper when the Appeals Court has decided a federal question in a way in conflict with applicable decisions of the Supreme Court. It is clear that such a conflict is present in the case before the Court.

At the district court level, there are approximately twenty three (23) [5] cases pending, and at the Court of

[5] The following is a list of the pending District Court cases.

*Wood* v. *United States*, No. CV75-0382-N (S.D. Cal.)
*Scarborough* v. *Schlesinger*, C.A. No. CV74-585-N (S.D. Cal.)
*Ruble* v. *Schlesinger*, C.A. No. CV75-0272-N (S.D. Cal.)
*Adams* v. *United States*, C.A. No. CV74-1585-ALS (C.D. Cal.)
*Kleveno* v. *Rogers*, C.A. No. C74-2535-AJZ (N.D. Cal.)
*Braye* v. *Webster*, C.A. No. Civ S-74-484 (E.D. Cal.)
*Braswell* v. *Webster*, C.A. No. C75-286S (W.D. Wash.)

Appeals level there are approximately six (6) pending cases. All of the cases decided to date at the district and appellate levels have found for the petitioners, except the *Carini* appellate decision. The Court of Appeals in *Carini* quoted from *Bell* v. *United States,* 366 U.S. 393, 401 (1961) as follows:

> "a soldier's entitlement to pay is dependent upon statutory right."

Based on that quotation, the Fourth Circuit held that since the VRB statute was not in effect at the beginning of the extension of enlistment period the re-elistees were not entitled to a bonus. The Supreme Court in *Bell* used the quoted statement to hold that even a Korean war defector was entitled to his military pay until that pay was terminated as provided in the controlling statutes. The Fourth Circuit has expanded the sweep of the statement far beyond the matters at issue in *Bell.*

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*Borschowa* v. *Middendorf,* C.A. No. 75-599S (W.D. Wash.)
*Birdsall* v. *United States,* C.A. No. 75-510S (W.D. Wash.)
*Switzer* v. *United States,* C.A. No. Civ 4-75-11 (D. Idaho)
*Johnson* v. *Schlesinger,* C.A. No. 75-0079-P (D. Hawaii)
*Aprill* v. *Schlesinger,* C.A. No. 75-0142-P (D. Hawaii)
*Armour* v. *Schlesinger,* C.A. No. 75-0221 (D. Hawaii)
*Achterhof* v. *Schlesinger,* C.A. 75-0275 (D. Hawaii)
*Bailey* v. *Sylvester,* C.A. No. 75-9 (D. S. Car.)
*Crawford* v. *Mangol,* C.A. No. 75-227 (D. S. Car.)
*Blockus* v. *Schlesinger,* C.A. No. 75-962 (D. S. Car.)
*Grezeika* v. *Schlesinger,* C.A. No. 75-1220 (D. S. Car.)
*Wilson* v. *Schlesinger,* C.A. No. 75-1344 (D. S. Car.)
*Johnston* v. *Schlesinger,* C.A. No. 75-1288 (D. S. Car.)
*Alderfer* v. *Schlesinger,* C.A. No. 75-1854 (D. S. Car.)
*Agnew* v. *Schlesinger,* C.A. No. 75-1624 (D. S. Car.)
*Beard* v. *United States,* C.A. No. Civ. 75-561-J-S (M.D. Fla.)



The Fourth Circuit appellate decision is in conflict with general principles of law announced in numerous cases. In *Lynch* v. *United States,* 294 U.S. 330, (1932), the Court held that because of the Fifth Amendment, the Federal Government was equally bound to honor its contracts as is a private party. The duties of the government are governed by laws applicable to contract between individuals.

Contracts are construed as of the time of execution. *Larionoff* v. *United States,* 365 F. Supp. 140, 145 (D.C. D.C. 1973). Enlistment in the military service establishes a contractual relationship. *United States ex rel. Whitaker* v. *Callaway,* 371 F. Supp. 585, (E.D. Penn. 1974); *Mellinger* v. *Laird,* 339 F. Supp. 434 (E.D. Penn. 1972); *Goldstein* v. *Clifford,* 290 F. Supp. 275 (D.C. N.J. 1968); *Pfile* v. *Corcoran,* 287 F. Supp. 554 (D.C. Col. 1968).

All of the elements of the contract are to be determined under general contract law, including the law of federal contracts as determined in Federal Court decisions. *Peavy* v. *Warner,* 493 F.2d 748 (5th Cir. 1974); *United States ex rel. Whitaker* v. *Callaway, supra; Pfile* v. *Corcoran, supra; Colden* v. *Asmus,* 322 F. Supp. 1163 (S.D. Col. 1973).

The enlistment instruments and the statutory law in effect when the instruments are signed constitute the complete enlistment contract. *Rehart* v. *Clark,* 448 F. 2d 170 (9th Cir. 1971); *Johnson* v. *Powell,* 414 F.2d 1060 (5th Cir. 1969); *Larionoff* v. *United States,* (D.C. Cir. No. 74-1211 and 1212, Feb. 17, 1976); *Morse* v. *Boswell,* 289 F. Supp. 812 (D.C. Md. 1968), aff'd., 401 F.2d 544 (4th Cir. 1968), cert. den. 393 U.S. 1052 (1969).

Other courts including the D.C. Circuit in *Larionoff*, and the District Courts in *Caloa* v. *United States, supra,* (App. p. 54a); *Collins* v *Rumsfeld, supra,* (App. p. 23a); *Adams* v. *United States, supra* (App. p. 32a); and *Aikin* v. *United States, supra,* (App. p. 43a) have applied the above principles of law and have arrived at a completely different decision than the decision of the Fourth Circuit in *Carini*. The holdings in the cited cases are directly contrary to *Carini,* and raise questions of law dealing with federal contract law, federal statutory law and federal constitutional law. The issues presented in all of the pending cases and in *Larionoff* and *Carini* can be resolved only by the Supreme Court.

At stake in this case are not only the contract rights of the 260 petitioners, but also those of an estimated 30,000 Navy enlistees,[6] who were promised a variable re-enlistment bonus in return for their contract to extend enlistment. Due to the large number of petitioners involved in the numerous cases, it is of compelling importance to have a decision from the Supreme Court in order to prevent conflicting decisions in the various districts and circuits, and further, to prevent the unequal treatment of re-enlistees with the same rights.

The government in *Larionoff* has moved the Court for an *en banc* rehearing by the D.C. Circuit.[7] In its petition the government asserted that the decision raises issues of "exceptional importance" under Rule 35(a),

[6] The number of affected parties is based on the Affidavit of Rear Admiral Charles Griffith, U.S. Navy dated October 10, 1974 and filed in the case of *Adams* v. *United States,* No. 74-1585-ALS (C.D. Cal. 1975).

[7] The Petition for Rehearing was subsequently rejected by the Court. (App. p. 109a).



Federal Rules of Appellate Procedure. In its petition the government stated:

> "Concerning plaintiff Johnson the panel has held that he is entitled to payment of the VRB notwithstanding that Congress revoked the VRB befor he was entitled to receive payment. As such the panel decision raises important questions of Congressional power which merit *en banc* consideration." Defendants-Appellants-Cross-Appellee's Petition for Rehearing and Suggestion for Rehearing *en banc, Larionoff* v. *United States,* Civil Nos. 74-1211, 74-1212 pp. 6-7.

The case of *Carini* is of no less "exceptional importance", as the same issues were before the Fourth Circuit Court of Appeals, therefore the *Carini* case warrants certiorari by the Supreme Court pursuant to Rule 19(b). The government has admitted in *Larionoff* that the very issues involved here come within the class of cases deserving review by the Supreme Court.

There is also a public policy issue in this case dealing with the credibility of one's government. The government should not be permitted to lead young men and women to believe that they will receive a substantial cash incentive if they extend their term of enlistment, only to withdraw the cash incentive at a later date under the guise that the law was changed regarding the cash incentive, and yet require that they serve the two years of extended enlistment.

## ARGUMENT THREE

**The Government's Retroactive Modification of an Enlistment Contract by Its Refusal To Pay a Contracted for Bonus Deprives Petitioners of a Vested Property Right in Violation of the Fifth Amendment to the United States Constitution.**

> "The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State, or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment." *Lynch* v. *United States,* 292 U.S. 571 at 579 (1934).

With the foregoing words, Justice Brandeis reiterated an established and fundamental principle of law—that the United States is as much bound by its contracts as are individuals.

When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private parties, *Lynch* v. *United States, supra,* and this is true of enlistment contracts. *Peavey* v. *Warner, supra; Colden* v. *Asmus, supra; U.S. ex rel. Whitaker* v. *Callaway, supra.*

Each of the petitioners herein entered into an enlistment contract with the Navy providing for an original enlistment of four years and an extension of their original enlistment for a period of two years. Each of the petitioners were promised a bonus of approximately Four Thousand Dollars ($4,000.00), to be paid at the end of the original four years of service, in return for their agreement to extend their enlistments. That the bonus to be paid at the end of the original enlistment



was an inducement, the promise of which prompted the agreement to extend enlistments by each of the petitioners, is evidenced by the stipulation of facts agreed to by the United States. (App. pp. 20a-21a). That the bonus was an inducement is further evidenced in the transcript of the testimony taken at a hearing January 3, 1975, before Judge Kellam for the Eastern District of Virginia at pages 12 and 13 thereof. Petitioner, James A. Carini, testified as follows:

> Question by Mr. Bradberry:
>
> "Mr. Carini, would you have agreed to serve in the United States Navy for a period of six years had you not been promised the bonus of $4,000.00 at the end of the original four?"
>
> Answer.
>
> "No."

Thereafter, at page 13 of the transcript, the government stipulated that additional witnesses in the case, if called, would testify substantially the same as Mr. Carini.

The government prepared the printed form extension contracts signed by the petitioners. In so doing, the government could easily have inserted a provision limiting each of the petitioner's rights to the variable re-enlistment bonus by conditioning receipt of said bonus upon the continued existence of the variable re-enlistment bonus program as of the date they were to receive payment of the bonus.

> "Since one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning than one with whom he is dealing, doubts arising from ambiguity of language are resolved in favor of the latter. . ." Williston, *Contracts,* 3rd Ed., Vol. 4, § 621 at p. 760.

It is a well settled principle of contract law that the terms of the contract are construed most strongly against the drafter of the contract. Corbin *Contracts,* Vol. 3 § 559 (1960); *Restatement of the Law of Contracts,* Vols. 1 & 2, § 236. This principle is considered especially appropriate in cases involving the United States because of the United States' vast economic resources and stronger bargaining position in contract negotiations. *United States* v. *Seckinger*, 397 U.S. 203, 216 (1970). It cannot reasonably be argued by the United States that any of the petitioners herein were in a position to negotiate better or more favorable terms than those contained in the contracts about which petitioners complain. If they wish to receive the bonus promised them in return for their extended service, they were obligated to execute the documents proffered to them by representatives of the United States Navy. The United States having selected the language of the contract must now live with it.

Contract rights against the government are property interests protected by the Fifth Amendment. Congressional power to abrogate existing government contracts is narrowly circumscribed. *Lynch* v. *United States, supra; Federal Housing Administration* v. *Darlington, Inc.*, 358 U.S. 84 (1958) (Harlan J., Dissenting); *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1968); *Larionoff* v. *United States, supra.*

Although Congress may constitutionally impair existing contract rights in the exercise of a paramount government power, such as war power, Congress is without power to *reduce expenditures* by abrogating contractual obligations of the United States. *Lynch* v. *United States, supra; Larionoff* v. *United States, supra,* at 25. As is noted by Judge McGowan in the *Larionoff* deci-



sion, the legislative history of the amendment to Title 37, § 308 indicates the purpose of the amendment was to save re-enlistment dollars, not to promote some paramount national interest. As Mr. Justice Brandeis stated:

> ". . . (C)ongress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts in the attempt to lessen govenment expenditure would not be the practice of economy but an act of repudiation. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation with all the wrong and reproach that term implies, as would be if the repudiator had been a State, or a municipality or a citizen."
> *Lynch, supra,* at p. 580.

## CONCLUSION

Petitioners entered into a valid and binding contract with the United States Government for the payment of an enlistment bonus in return for the extension of their military service. Prior to entering into the extension period, each of the petitioners was advised that he would not receive the bonus, but that he was required to continue to serve his extened military service. Petitioners instituted suit to recover the bonus promised to them and subsequently taken away by the United States. In one Circuit Court of Appeals and six Federal District Courts, there have been determinations in favor of the enlisted men and against the United States. In the Fourth Circuit Court of Appeals, there has been a determination in favor of the United States. Numerous district court cases remain to be decided, and the history of this litigation indicates that appeals will be taken from those decisions regardless of the

results. It is thus imperative that this Honorable Court resolve the conflict in law pertaining to the facts of this case as a result of the inconsistent Court of Appeals opinions now standing. It is further imperative that this Honorable Court resolve the Fifth Amendment question of whether or not the contract rights, which were vested in petitioners herein, have been arbitrarily and capriciously abrogated by the United States Government as a cost savings measure.

The importance of the issues herein raised is heightened by the fact that the questions involved relate directly to the United States' ability to obtain and retain skilled personnel for service in the military establishment over an extended priod of time.

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari be granted in order that the significant Constitutional issues raised herein be resolved.

Respectfully submitted,

JAMES E. BRADBERRY
D. WAYNE MOORE
MOORE, WEAVER, MOORE
& BRADBERRY
13185 Warwick Boulevard
Newport News, Virginia 23602

GEORGE H. MAHLER
MAHLER & CAVE
2224 North Great Neck Road
Virginia Beach, Virginia
23451

*Attorneys for Petitioners*

A. E. HOWARD
University of Virginia
School of Law
*Of Counsel*